IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 250 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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VIJAYA PARK COOP HOUSING SOC

Versus

TRIVEDI BHARTIBEN W/O SS TRIVEDI

Appearance:

1. Civil Revision Application No. 250 of 1989

MR HARIN P RAVAL for Petitioner No. 1

MR SURESH M SHAH for Respondent No. 1-2,4,7

MR MEHUL S SHAH for Respondent No. 1-4,7

MR PR NANAVATI for Respondent No. 3

NOTICE SERVED for Respondent No. 5

MR PS CHAMPANERI for Respondent No. 5/1-5/4

MR BS PATEL for Respondent No. 6,8

MRS RANJAN B PATEL for Respondent No. 6-6/1,8

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 10/07/2002

ORAL JUDGEMENT

#. The petitioner, herein, has preferred this Civil Revision Application under Section 115 of the Civil Procedure Code, 1908, challenging the order dated 7.1.1989 recorded by the learned Civil Judge (S.D.) at Mehsana below Ex.68 in Special Civil Suit No.29/1988 under which the learned trial Judge dismissed the said application of the present petitioner - original plaintiff seeking amendment in plaint under Order-6 Rule-17 read with Order-1 Rule-10 as well as under Section 151 of the said Code.

#. It appears that the petitioner, herein, preferred the aforesaid Civil Suit for specific performance of an agreement of purchase of a property from the respondents No.1 to 4 and 7. During the pendency of the said suit, respondents No.6 and 8, herein, being the defendants in the aforesaid Civil Suit submitted an application contending that since the suit has been filed by the proposed Cooperative Society, it is not maintainable. It seems that with a view to meet with the said contention of respondents No.6 and 8, the petitioner, herein, submitted an application at Ex.68 before the trial Court in the aforesaid Civil Suit for amending the plaint.

#. In the said application the petitioner, herein, stated that in the cause title of the plaint the plaintiff has been shown as;

"Vijay Park Cooperative Housing Society, (proposed) at Siddhpur's Chief Promoter Dasharathlal Ambalal Patel.

The petitioner contended that the concerned respondents have not filed Written Statement but they have submitted an application stating that the suit as filed by the petitioner is not maintainable. It is also contended by the petitioner that though the agreement has been executed in favour of the petitioner - original plaintiff, however, it was intended that the registered Sale Deed may be executed in favour of the proposed Cooperative Society in future and, therefore, the name of the proposed Cooperative Society has been mentioned in the agreement to sell and, therefore, the description of the plaintiff - petitioner, herein, has been so shown in the cause title of the plaint. That in fact, the consideration of the agreement to sell has been paid by the petitioner himself and an agreement to sell has also been effected by the petitioner - plaintiff, in his individual capacity. Therefore, with a view to avoid any technical defect as indicated in the aforesaid

application of respondents No.6 and 8, the petitioner desired to amend the plaint so as to delete the words from the cause tile;

"Vijay Park Cooperative Housing Society, Siddhpur. (proposed)'s Chief Promoter.

#. The petitioner also requested the trial Court by the said application for permitting the said amendment in the cause title as well as in the verification of the plaint at the foot thereof.

#. After hearing the learned advocates for the parties the learned trial Judge had passed a short order as follows;

"Rejected because original suit has been filed by proposed unregistered society and by this amendment as new man intends to become plaintiff."

#. Feeling aggrieved by the said order of the learned trial Judge, the petitioner, herein, has preferred this Civil Revision Application before this Court. It has been mainly contended here that the order in question cannot be treated to be an order within the provisions made in Civil Procedure Code, for that purpose and, therefore, the order cannot be treated to be legal. It is further contended that it is simply a question of misdescription in the cause title of the plaint and, therefore, ordinarily such an amendment ought to have been allowed by the trial Court. It is, therefore, contended that in view of the above position the order, in question is illegal and, therefore, deserves to be quashed and set aside. The petitioner has, therefore, prayed that the present Civil Revision Application may be allowed and the order impugned in this Civil Revision Application may be quashed and set aside and the aforesaid application of the petitioner at Ex.68 filed before the trial Court in Special Civil Suit No.29/1988 may be allowed and the petitioner, herein, may be permitted to amend the plaint in the said suit as prayed in the said application.

#. On receipt of this Revision Application rule was issued and in response to the service of notice of rule Mr.S.M.Shah, learned advocate appears on behalf of respondents No.1 to 4 and 7. Mr.B.S.Patel, learned advocate appears on behalf of respondents No.6 and 8 and Mr.P.S.Champaneri, learned advocate appears on behalf of respondent No.5.

#. It appears from the hearing that the aforesaid agreement in respect of which the suit for specific performance has been filed was executed by the respondents No.1 to 4. It also appears that subsequently respondents No.1 to 4 have executed a registered Sale Deed in favour of respondents No.7 and 8 in respect of the said property.

#. I have therefore heard the arguments advanced by Mr.P.M.Raval, learned Senior Advocate for Mr.H.P.Raval, for the petitioner. I have also heard Mr.S.M.Shah and Mr.B.S.Patel, learned advocates for the concerned respondents. I have also heard Mr.Champaneri.

##. The learned Senior advocate for the petitioner has argued the matter stating that the learned trial Judge has not given reasons for passing the impugned order rejecting the aforesaid application and, therefore the order in question cannot be construed to be an order within the purview of the provision made in Sub Section 14 of Section 2 of the said Code. The said provision defines "order" as follows;

> Section 2(14) "order" means the formal expression of any decision of a civil court which is not a decree;

##. It is his contention that while rejecting the said application, the trial Court has not given any reason and, therefore, the order cannot be treated to be an order in the eye of law, in view of the aforesaid definition of the term "order" shown in Sub Section 14 of Section 2 of the said Code.

##. It is true that detailed reasons have not been assigned by the learned Judge while dismissing the said application. However, the learned trial Judge has observed that by seeking amendment in the cause title of the plaint, a new person is sought to be introduced as plaintiff in place of the original plaintiff and, therefore, the amendment was not competent.

##. Whether or not we may agree with the aforesaid reason of the trial Court it cannot be said that the order is passed without any reason. It also cannot be said that it is not a reasoned order.

##. The learned trial Judge appears to have said that the suit was filed in the name of the proposed

Cooperative Society through its Chief Promoter and by deleting the earlier words from the cause title of the plaint, an attempt is being made to show that the suit may be treated to have been filed by the Dashrathlal Ambalal Patel in his individual capacity. Therefore, the learned trial Judge has found that the entire description of the plaint is sought to be changed and, therefore, amendment could not be allowed.

##. It therefore cannot be said that the order in question is without any reason and, therefore, it does not stand to the test of the definition of order under Section 2(14) of the Civil Procedure Code.

##. At the same time, it is a fact that the agreement has been entered into by the petitioner in the name of Vijay Cooperative Housing Society, Siddhpur (proposed)'s, Chief Promoter - Dashrathlal Ambalal Patel.

##. Now, if the amendment is allowed only Dashrathlal Ambalal Patel will stand as plaintiff. This shows that the reasoning advanced by the learned Judge is not totally baseless.

##. The learned advocate for the petitioner has contended that the amendment sought by the petitioner in cause title as well as in the verification of the plaint merely seeks to correct the description of the plaintiff in the plaint. It is also his contention that if there is a misdescription in the plaint then it can be corrected and in support of the said contention he has relied upon the Division Bench decision of this Court in case of Halar Salt & Chemicals vs. Saiga & Co.(Exports), reported in 1966 Vol.7, GLR p.918. The pertinent observation can be referred to ready reference as follows :-

"It is no doubt true that Order-7 Rule-1 enjoins that the plaint shall contain the name and description of the defendant so far as they can be ascertained. But the title is only one part of the plaint and no undue weight or importance can be attached to any one part of the plaint for the purpose of ascertaining who is the defendant sue in the plaint. If it is reasonably clear on a fair and proper reading of the plaint in all its parts taken as a whole that a particular person is the defendant sue in the plaint and such person is wrongly described in the title of the plaint, the defect or error in the description can be corrected by an amendment and it is wholly irrelevant whether the description

in the title of the suit is applicable to an existing entity or not. The power to correct the defect or mistake in the description is exercisable by the Court in such a case under Section 153 or possibly Order-6 Rule-17 of the Civil Procedure Code."

##. It is true that the said decision makes it clear that if there is some misdescription, it can be corrected at any stage of the proceeding and there is no difficulty in saying that even such amendment can be allowed even at a later stage if it is found to be a real misdescription of the plaintiff.

##. In the present case, I find that the agreement has been entered into by the Dashrathlal Ambalal Patel as the Chief Promoter of a proposed Cooperative Housing Society and the suit has also been filed by him in the said capacity. Now, when an application was submitted that the suit as filed by the proposed Cooperative Housing Society is not maintainable, the said amendment was sought to be made in the cause title of the plaint as well as in the verification of the plaint.

##. It is very clear that the suit has been filed by the Chief Promoter of a proposed Cooperative Housing Society and even the agreement has also been entered into by him in his capacity as the Chief Promoter of a proposed Cooperative Housing Society. Now, instead of showing him or describing him as the Chief Promoter of the proposed Cooperative Housing Society, he is sought to be shown or described simply as Dashrathlal Ambalal Patel. Then the nature of the suit is likely to be changed. Instead of a suit by the Chief Promoter of a proposed Cooperative Housing Society, it would amount to a suit by an individual person. There is basic difference in the suit filed by the person in his individual capacity and a suit filed by a person as a Chief Promoter of a proposed Cooperative Housing Society.

##. In that view of the matter, it cannot be said that it is a simple misdescription and, therefore, the amendment ought to have been allowed.

##. It is also to be seen that even the agreement has also entered into in the name of Dashrathlal Ambalal Patel - as Chief Promoter of the said proposed Cooperative Housing Society. It has also not been entered into in the individual capacity by Dashrathlal Ambalal Patel. Therefore, the suit filed by the Chief Promoter of a proposed Cooperative Housing Society cannot

be permitted to be converted as a suit filed by an individual person in his individual capacity. In that view of the matter, the amendment can be said to have been rightly refused by the trial Court and the order passed by the trial Court cannot be said to be illegal on the aforesaid consideration.

##. The amendment sought can also not be treated as simple and bonafide since the amendment, if allowed, is likely to take away a valuable defence of the respondent that a suit by an unregistered Cooperative Society is not maintainable, particularly when the suit seeks specific performance of an agreement in favour of an unregistered Cooperative Society.

##. It has also been contended that though the Division Bench of this Court has held that a suit filed by on an agreement in favour of a proposed Cooperative Housing Society is not maintainable, which is a law not applicable in India since this law has been founded on interpretation of a Foreign Law.

##. I am of the view that this is not a point which requires consideration by this Court at this stage for the purpose of deciding the present Revision Application and, therefore, I do not express any opinion on the said point. Suffice it to state that the rejection of amendment is not found to be illegal on the face of it. Therefore, Revision Application is without any merit and, therefore, it deserves to be dismissed.

##. For the foregoing reasons, the Revision Application is ordered to be dismissed. Rule is discharged. No order as to costs. Interim relief stands vacated.

(D. P. BUCH, J.)
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